

1 MR. SCHAUBLE: Your Honor, with your permission, I'd
2 like to place before the witness TBF Exhibit 269?

3 JUDGE CHACHKIN: All right.

4 BY MR. SCHAUBLE:

5 Q And direct your attention to -- direct the witness's
6 attention to the sentence that begins on the last two words of
7 page 3 and going on to page 4 and ask the witness to read that
8 sentence?

9 A Yes, I have read it.

10 Q Mr. Gardner, what did you mean by that sentence when
11 you signed that declaration?

12 A Raystay had specific funds to construct the permits.
13 All we needed in place was a viable business plan. And if we
14 would have been able to put a viable business plan together,
15 we would have gone to the lender, if that would have been re-
16 quired, and asked to use the funds to do that.

17 MR. SCHAUBLE: No further questions, Your Honor.

18 JUDGE CHACHKIN: So, you, you agree that -- with the
19 statement here that you did not intend to use your personal
20 funds?

21 MR. GARDNER: It was never my intention. If we
22 would have had lending refusal it's possible that I would use
23 my personal funds, but the Greyhound loan agreement did not
24 prevent us from asking for a waiver on the restriction to use
25 the funds that Raystay had. Raystay was generating sufficient

1 cash flow to have done that easily.

2 JUDGE CHACHKIN: You -- in answer to Mr. Emmons
3 questions at the beginning of his testimony when he asked you
4 about the, the extension application, you made some reference
5 to the fact that you misinterpreted the statement as to site
6 preparation --

7 MR. GARDNER: Yes.

8 JUDGE CHACHKIN: -- if I recall. What did you have
9 in mind?

10 MR. GARDNER: The statement --

11 MR. SCHAUBLE: Can the witness --

12 JUDGE CHACHKIN: Yes.

13 MR. GARDNER: -- had before, Your Honor?

14 JUDGE CHACHKIN: What, what is it?

15 MR. SCHAUBLE: I think that might be helpful --

16 JUDGE CHACHKIN: 245?

17 MR. SCHAUBLE: -- in, in answering the question.

18 MR. EMMONS: That's Exhibit 24-- TBF 245, Your
19 Honor, page 3.

20 MR. GARDNER: Yes. I have it.

21 MR. EMMONS: Third paragraph, last sentence.

22 MR. GARDNER: Okay. "A representative of Raystay
23 and an engineer have visited the -- site and ascertained what
24 site preparation work and modifications need to be done at the
25 site." Yes. I misunderstood what that meant. My

1 interpretation was that this was -- David Gardner was the
2 representative of Raystay, and I still think that is a correct
3 statement. The engineer that Mr. Cohen's office and David
4 Gardner meant in the latter part of the sentence was not the
5 same engineer that I had thought they meant -- or that the
6 statement meant. The engineer I thought the statement meant
7 was the original site location engineer that we employed when
8 we applied for the construction permit.

9 JUDGE CHACHKIN: And what -- did you learn-- later
10 learn that the engineer here was somebody else?

11 MR. GARDNER: It was someone else, yes.

12 JUDGE CHACHKIN: When did you learn that?

13 MR. GARDNER: When I was reviewing the document.

14 JUDGE CHACHKIN: And who did you learn was the
15 engineer?

16 MR. GARDNER: The engineer was a Trinity engineer.

17 JUDGE CHACHKIN: Any further questions of the wit-
18 ness?

19 MR. EMMONS: No, Your Honor.

20 MR. SHOOK: No, Your Honor.

21 JUDGE CHACHKIN: You're excused. Thank you, Mr.
22 Gardner.

23 MR. GARDNER: Thank you, Your Honor.

24 JUDGE CHACHKIN: We have no more testimony on this
25 issue, I, I gather. Is that correct?

1 MR. GARDNER: That's correct, Your Honor.

2 JUDGE CHACHKIN: I, I should point out that when I
3 added this issue TBF had argued that there had been misrep-
4 sentations in the application itself. It's quite obvious from
5 all the testimony we've taken that we're dealing with some-
6 thing entirely different. We're not just dealing with the
7 misrepresentations in the application; we're dealing with the
8 question of whether there was a duty to provide additional
9 information. And, and we have a, a situation here -- it seems
10 to me at first blush -- first of all the instructions require
11 three responses: status of construction, reasons for delaying
12 commencement or completion of construction, and detailed steps
13 being taken to remedy delay, delays. And it would seem to me
14 at first blush that in the responses, in the Exhibit 1 here of
15 the Application for Extension, that Glendale -- or Raystay, I
16 should say, provided information as to the status of
17 construction. And it would appear to me they didn't provide
18 any information as to the reasons for the delay in commence-
19 ment or, or completion of construction and the detailed steps
20 being taken to remain -- remedy delays. And the question,
21 however, the -- as the application provides, says if, if the
22 parties don't provide the necessary information, the extension
23 will be denied.

24 So, here we have a situation where it appears to me
25 that a portion of the information sought by the Commission was

1 not provided, and the question I have is whether that consti-
2 tutes a lack of candor. It's a different situation where you
3 provide a partial answer and then you could argue that you
4 should have provided a more complete answer. But it seems to
5 me that two parts of the response have not been, have not been
6 provided at all. And what I would like Parties to give me
7 when they write findings is to provide me with some cases --
8 case law as to whether under those circumstances that consti-
9 tutes a misrepresentation or a lack of candor, recognizing, of
10 course, that if the Commission felt that the information was
11 insufficient, if it didn't comply with the form, that the
12 Commission could have turned down the extension or requested
13 further information, which it did not do.

14 The Parties have any comment on that?

15 MR. EMMONS: I think that this is a pertinent ques-
16 tion, Your Honor, that should be addressed in findings. I, I
17 haven't had a chance to sort out all the ramifications of, of
18 the question in terms -- of the sense of a possible legal
19 authority, but I agree that it should be addressed.

20 MR. SCHAUBLE: And we will address it in our
21 findings --

22 MR. COHEN: Yes.

23 MR. SCHAUBLE: -- Your Honor.

24 JUDGE CHACHKIN: Now, I'm not in, in any way -- I'm
25 not in any way deciding whether or not there was a

1 misrepresentation in terms of the, the information provided,
2 but I'm saying we obviously moved far away from getting into
3 what was provided and to moving into areas of material that
4 was omitted.

5 MR. EMMONS: Yes. I agree that that is, is largely
6 the case. I mean, I agree it's entirely the case, but
7 certain --

8 JUDGE CHACHKIN: All right. I guess, since we still
9 have a remaining issue, I can't close the record at this time.
10 And I've set established dates and -- to try the additional
11 issue, and that's May 3rd, and that was pursuant to request of
12 all the Parties, including the Bureau. So, we're now in
13 recess until May 3rd.

14 MR. EMMONS: Well, in that regard --

15 JUDGE CHACHKIN: Yes?

16 MR. EMMONS: -- regard to --

17 JUDGE CHACHKIN: Oh, that's right. There is one
18 exhibit. Yeah.

19 MR. EMMONS: TBF at one point offered TBF Exhibit
20 268 and I believe Your Honor reserved ruling on it subject to
21 -- or had reserved ruling subject to further testimony on the
22 exhibit. You would like us not to seek further testimony on
23 the exhibit, so TBF will withdraw TBF Exhibit 268.

24 JUDGE CHACHKIN: All right. The record will reflect
25 that TBF is not offering -- TBF Exhibit 268 has not been

1 offered. It's been identified, but it hasn't been offered.

2 MR. EMMONS: Correct.

3 JUDGE CHACHKIN: We're now in recess.

4 (Whereupon, at 10:49 a.m. on Thursday, January 27,
5 1994, the hearing was adjourned.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA, INC.

Name AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Docket No.

WASHINGTON, D.C.

Place

JANUARY 27, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 5290 through 5345, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

February 2, 1994

Date

Diana J. Hallman
Diana J. Hallman, Transcriber
Free State Reporting, Inc.

February 2, 1994

Date

Diane S. Windell
Diane S. Windell, Proofreader
Free State Reporting, Inc.

February 2, 1994

Date

Alice Wehner
Alice Wehner, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947